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DEPT. OF TRANSPORTATION  
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**BEFORE THE  
FEDERAL AVIATION ADMINISTRATION  
OFFICE OF CHIEF COUNSEL  
WASHINGTON, D.C.**

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Reports by Carriers on Incidents )  
Involving Animals During Air )  
Transport )  
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Docket No. FAA-2002-13378-3453

**COMMENTS  
OF  
DELTA AIR LINES, INC.**

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**BEFORE THE  
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**Docket No. FAA-2002-13378**

**COMMENTS  
OF  
DELTA AIR LINES, INC.**

Delta Air Lines, Inc. ("Delta") completely endorses the intent of the proposed rule, which seeks to implement Section 41721 of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century ("Air 21"). The safe and humane transport of live animals is a paramount consideration at Delta and we will always accept full responsibility for the health and welfare of animals in our custody.

While the intent of the proposed rule is laudable, the substantive aspects of the proposal cannot be implemented in the present form without imposing unjustified cost burdens and unrealistic requirements on Delta. A final rule consistent with Delta's

proposed revisions, which are attached as Appendix A, would avoid the unfortunate and unintended effect of increasing the cost of carrying live animals to the point of causing Delta to consider whether it should remain in the business of live animal transport.

## **Background**

### **History of Section 41721**

In general, Delta endorses the contemporaneously filed Comments of the Air Transport Association of America, Inc. (“ATA”) in this proceeding. The ATA Comments review the history of Section 41721, provide the necessary perspective to understand the scope of the problem and the appropriate remedy, and demonstrate that claims of a high incidence of mortality, injury or loss of animals in air transportation have no evidentiary foundation.

### **The American Veterinary Medical Association Group**

An objective study authorized in December 2000 by USDA-APHIS, confirms the limited scope of the problem sought to be addressed by Section 41721. The study, conducted by the Animal Air Transportation Study Group of the American Veterinary Medical Association (“AVMA”), focused on the proper handling of live animals and the appropriate training for carrier personnel who handle such animals. Among other things, the AVMA Study Group Report “revealed general due diligence by those airlines visited for the transport of dogs and cats, providing the animals’ owners and the public a significant degree of comfort, confidence and reliability.” AVMA Study Group Report.

The findings of the AVMA, set forth in a report entitled, “*A Report from the American Veterinary Medical Association Animal Air Transportation Study Group*” (September, 2002), provide a reasonable basis for narrowing the scope of the proposed rule to reduce the heavy financial and administrative burden of compliance. For that reason, Delta hereby incorporates the AVMA Study Group report herein by reference, recommends that the FAA take official notice of these findings, and requests that FAA adopt the findings as the proper evidentiary foundation for constructing a more practical and realistic reporting requirement, along the lines set forth below.

## **Specific Comments on Proposed Rule**

### **1. The Definition of “Animal” Is Overbroad and Impractical.**

The proposed rule defines “animal” as “any warm or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States, or is being transported for the purposes of being sold as a pet in a family household in the United States.” Delta submits that the terms “animal” or “pet” should

be defined as either a live dog or cat, a definition consistent with the approach of the Animal Welfare Act and the AVMA Study Group Report. Unless the proposed definition is narrowed in this manner, the requirement to transport cold-blooded animals will have a harsh and unintended impact on transporting carriers, shippers, consignees, and the animals transported.

There is a key distinction between the air transport of dogs or cats and cold-blooded creatures. Dogs and cats are shipped in containers that lend themselves to visual inspection without opening the shipment. Cold-blooded creatures are packaged in secure flight containers, which are not designed to be opened during transit. Yet the NPRM would require the shipment to be opened as the only way to determine the health and welfare of the cold-blooded animals in the transport containers.

To fulfill the requirements of the NPRM as to cold-blooded creatures, Delta agents would have to physically inspect animals and their containers to verify the number of cold-blooded animals tendered and delivered, as well as make an assessment of whether they are alive or injured. The only way to accomplish this would be to open each shipment to count all noses in a dedicated, temperature controlled, escape-proof space, a dangerous, administratively burdensome and costly procedure, which is in direct conflict with Animal Welfare Act Section 2.131(a)(1).

Since some animals carry diseases that can be transmitted to humans by contact, appropriate clothing and equipment would have to be provided (protective gear would include jumpsuits, gloves, facemasks and respirators). The cost to Delta of performing open container inspections, including protective gear and additional training on safe handling, could easily exceed \$1 million annually.

The inclusion of cold-blooded animals in the NPRM definition of "animals" would create an untenable and unacceptable risk of injury for Delta employees who handle live animals. Over the past 3 years, 6 Delta agents have been injured during the handling of shipments of dogs and cats notwithstanding that their containers are not required to be opened. If Delta is required to open each container in a shipment to verify the health of every animal we accept, the risk to our employees of being attacked or injured would increase manifold over the risk prevailing today.

Delta has had a recent experience in which a zoo was called so that trained third-party personnel with the proper expertise could open a container of venomous snakes. A third-party inspection process would be cost-prohibitive to apply on a routine basis, however, and also would not be feasible from a logistical standpoint. No matter how well trained, airline employees are not veterinarians with the necessary expertise to fully protect themselves from the danger of handling cold-blooded animals or to determine whether such animals are injured or in some sort of dormant condition. This means that it may not be feasible for Delta personnel to inspect some types of containers. For example, Delta will not open and inspect the contents of snake shipments.

There is also an inherent danger to any animal that is the subject of an open container inspection. Despite the carrier's best efforts, an open container inspection may provide an opportunity otherwise unavailable to the animal to escape its container and any unsecured holding area, to be injured, to become lost, or to die, all as the direct result of a carrier's good faith attempt to comply with the proposed rule.

2. A Reasonable Definition of, and Trigger for, Reportable Incidents Must Be Adopted.

Section 41721 requires all "incidents" to be reported but neither defines this term nor indicates how the requirement is triggered. Delta submits that a two-pronged test should be established to determine both what must be reported and the trigger for the reporting requirement. The following definition of "reportable incident," as determined by the AVMA Study Group, is a reasonable definition of a "reportable incident" and should be adopted by FAA as the first prong of the Section 119.72 reporting requirement:

"A reportable incident is the death, injury, or escape of an animal while in the physical custody of the carrier, which after investigation, is proven to be the result of a preventable action by the carrier."

The second prong of the reporting requirement would rely on passenger or shipper complaints as an objective measure to trigger the reporting requirement. Such reliance would be consistent with most consumer protection reporting in the airline industry.

3. The AVMA Criteria for Non-reportability Must Be Reflected in the Proposed Rule.

According to the AVMA Study Group, a non-reportable incident may include but is not limited to:

- Sedation, tranquilization, or medication of the animal
- Death, injury or escape of the animal as a result of the animal's own actions
- Death, injury or escape of the animal after the animal has been released to the consignee or is otherwise not in the physical custody of the carrier
- Known or unknown illness or other physical or mental condition of the animal
- An unknown defect in the animal container that was not apparent to the shipper or carrier at the time of acceptance.

Delta urges FAA to adopt the AVMA Study Group's criteria for non-reportability as both reasonable and practicable.

4. The Requirement to Report Incidents within 15 Days Is Unrealistic and Must Be Modified.

The NPRM requires air carriers to report incidents within 15 days of the end of the month to which the information applies. Fifteen days would not allow enough time to complete an investigation of the incident. An investigation, necropsy and veterinarian report would require at least 30 days to complete, which is consistent with the AVMA-ATA Joint Task Force recommendation. The cause of injury or death cannot always be determined with any certainty. Since the reporting of unsubstantiated claims of injury or death will not serve the public interest in providing a true picture of the current state of the transport of animals by air, the NPRM should be modified to allow reporting to occur after a determination of causation.

5. The Scope of the Proposed Rule Should Be Limited to Domestic Transportation.

Section 41721 and the proposed rule do not apply to foreign air carriers, all-cargo carriers and charter carriers. They apply only to U.S. scheduled passenger air carriers. A sound way to address this competitive inequity and meet Congressional intent is to limit the scope of the reporting requirement to incidents occurring during the course of domestic scheduled air transportation.

6. FAA's Paperwork Reduction Act and Economic Evaluation Are Flawed.

Pursuant to the Paperwork Reduction Act, FAA states that the proposed regulation "would result in no significant annual recordkeeping or reporting burden because the air carriers covered by the reporting requirements are currently required to submit similar reports to the Bureau of Transportation Statistics, Department of Transportation." The reality is that carriers will incur significant expenses in developing systems to track the number of incidents involving the loss, injury, or death of an animal during air transport. Delta's tracking is limited to the number of shipments. At the present time, Delta does not have a database to determine the individual numbers of animals in a shipment. No carrier currently has systems in place to track this type of information.

The NPRM also violates Executive Order 12866 directing that federal agencies "propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs." The expenditures required by the carriers to track and report the extremely small number of incidents greatly outweigh the perceived benefits derived from reporting such incidents.

7. Other Deficiencies in the Proposed Rule Must Be Corrected.

- a) Section 119.72(a). The term "loss" is not defined by the NPRM. Absent such definition or further guidance, Delta will not be able to determine at what point an animal is considered lost. For example, is an

animal that fails to make a connection (for whatever reason) enroute to the destination considered “lost”?

b) Section 119.72(b):

- (3) The inclusion of the name of the animal would serve no purpose other than to personify the animal, distort its relationship to its owner and advance the political agenda of special interest organizations.
- (4) The reporting of “incidents” will be a matter of public record. Any requirement to identify the owner would be an invasion of privacy that may expose the owner to harassment or threats from various overzealous organizations or individuals.
- (4) A requirement to report the “guardian” of an animal is inappropriate, and irrelevant, and this imprecise term should be deleted to avoid unnecessary confusion as to whom may or may not be an animal’s guardian.
- (8) The inclusion of the name, title, address and telephone number of the individual filing the report on behalf of the air carrier would be an invasion of privacy and may expose the individual to potential harassment and the carrier to possible legal liability.

c) Section 119.72(c):

- (2) The proposed rule defines “animal” as any warm or cold-blooded animal. For the reasons previously noted, “animal” should be defined as either a live dog or cat.
- (2) Since the term “pet” also is not defined by the NPRM, almost any live animal could fall under this provision. For the reasons noted above, however, “pet” should be defined as either a live dog or cat.

**Conclusion**

Delta urges that the proposed rule be amended along the lines of the revisions set forth in these Comments and Appendix A so that carriers would not be subjected to unjustified compliance costs and onerous administrative burdens. A final rule consistent with Appendix A would promote the safe transportation of pets without creating a deterrent to carriers who wish to continue to provide such service.

Respectfully submitted,



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## **APPENDIX A**

### **Delta's Revised Section 119.72**

#### **119.72 Reports by air carriers on incidents involving animals during air transport.**

- (a) Any air carrier that provides scheduled passenger air transportation shall, within 15 days of the end of the first month in which the information required below becomes available, submit to the Animal and Plant Health Inspection Service, United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.
- (b) The report shall be made in the form and manner set forth in reporting directives issued by the USDA Animal and Plant Health Inspection Service, and shall contain the following information:
  - (1) Carrier and flight number;
  - (2) Estimated date and time of the incident;
  - (3) Narrative description of the incident;
  - (4) Narrative description of the cause of the incident; and
  - (5) Narrative description of any corrective action taken in response to the incident.
- (c) For the purposes of this section:
  - (1) The air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or person designated to pick up the animal at the final destination of the animal;



(2) Animal means any dog or cat which, at the time of air transportation, is being kept as a pet in a family household in the United States or is being transported for the purpose of being sold as a pet in a family household in the United States;

(3) Incident means a complaint about the death, injury or escape of an animal filed with an air carrier by an accompanying passenger or shipper and which, after investigation, the death, injury, or escape of an animal is proven to be the result of a preventable action by the air carrier, which the air carrier was responsible for undertaking; and

(4) Air transport means intrastate or interstate scheduled passenger air transportation. It does not include incidents occurring in international air transportation or on charter or all-cargo flights.